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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

MAR 17 2011

**Uniform Issue List: 402.00-00**

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**Legend:**

Taxpayer A = \*\*\*\*\*  
  
Taxpayer B = \*\*\*\*\*  
  
Plan X = \*\*\*\*\*  
  
Employer A = \*\*\*\*\*  
  
Amount 1 = \$\*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your request dated \*\*\*\*\*in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

Taxpayer A represents that Taxpayer B received a distribution from Plan X totaling Amount 1. Taxpayer A asserts that the failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to the fact that Taxpayer B entered the hospital and passed away during the 60-day period.

Taxpayer B ended his employment at Employer A in \*\*\*\*. Unbeknownst to him, Plan X had a "cash out" provision that mandated complete distribution of plan assets upon the participant's attainment of 65 years of age. Taxpayer B received a check for Amount 1 dated \*\*\*\*\*, and initiated arrangements to move the funds to an individual retirement account in order to maintain the funds in a tax free vehicle. In the meantime, Taxpayer B had deposited Amount 1 into a joint account with Taxpayer A. Between the

time of the distribution from Plan X and his scheduled rollover, Taxpayer B became ill and passed away. Taxpayer A sought to complete the rollover intended by her husband.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount 1 contained in section 402(c)(3) of the Code in this instance and allow Taxpayer A to make a rollover contribution to a tax-deferred vehicle in her name.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(9) of the Code provides that if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection will apply as if the spouse was the employee.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that Taxpayer B's failure to accomplish a timely rollover was caused by the death of Taxpayer B prior to a completed rollover. Because Taxpayer B is deceased, it is impossible for Taxpayer B to complete the proposed transaction. Since Amount 1 was received by Taxpayer B from Plan X prior to Taxpayer B's death,

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Taxpayer A is precluded from rolling the funds over into a tax-deferred account in her name under section 402(c)(9) of the Code. Therefore, the Service declines to grant a waiver of the 60-day rollover period and allow Taxpayer A to roll the funds over into a tax-deferred account in her name.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\*\*\* (Identification Number \*\*\*\*\* ) at (\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to \*\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager,  
Employee Plans Technical Group 1